

HOUSE BILL NO. 420

INTRODUCED BY WAGMAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT IN A CHILD ABUSE AND NEGLECT PROCEEDING, IF A MEMBER OF THE CHILD'S EXTENDED FAMILY HAS REQUESTED THAT TEMPORARY OR PERMANENT CUSTODY BE AWARDED TO THAT FAMILY MEMBER AND THE REQUEST IS DENIED, THE FAMILY MEMBER IS ENTITLED TO A WRITTEN STATEMENT OF THE REASONS FOR THE DENIAL AS ALLOWED BY CONFIDENTIALITY LAWS; AND AMENDING SECTIONS 41-3-438, 41-3-439, AND 41-3-445, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-438, MCA, is amended to read:

"41-3-438. Disposition -- hearing -- order. (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

1 (a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions
2 and limitations the court may prescribe;

3 (b) order the placement of the child with the noncustodial parent, superseding any existing custodial
4 order, and dismiss the proceeding with no further obligation on the part of the department to provide services
5 to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian
6 from whom the child was removed in the initial proceeding;

7 (c) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in
8 41-1-501;

9 (d) transfer temporary legal custody to any of the following:

10 (i) the department;

11 (ii) a licensed child-placing agency that is willing and able to assume responsibility for the education,
12 care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide
13 care of the child; or

14 (iii) a relative or other individual who is recommended by the department or a licensed child-placing
15 agency designated by the court and who is found by the court to be qualified to receive and care for the child;

16 (e) order a party to the action to do what is necessary to give effect to the final disposition, including
17 undertaking medical and psychological evaluations, treatment, and counseling that does not require an
18 expenditure of money by the department unless the department consents and informs the court that resources
19 are available for payment. The department is the payor of last resort after all family, insurance, and other
20 resources have been examined.

21 (f) order further care and treatment as the court considers in the best interests of the child that does not
22 require an expenditure of money by the department unless the department consents and informs the court that
23 resources are available for the proposed care and treatment. The department is the payor of last resort after all
24 family, insurance, and other resources have been examined pursuant to 41-3-446.

25 (4) (a) If the court awards temporary legal custody of an abandoned child other than to the department
26 or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's
27 extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

28 (i) placement of the abandoned child with the extended family member is in the best interests of the
29 child;

30 (ii) the extended family member requests that the child be placed with the family member; and

(iii) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(c) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member and, THE DEPARTMENT SHALL INVESTIGATE AND DETERMINE IF AWARDING CUSTODY TO THE FAMILY MEMBER IS IN THE BEST INTERESTS OF THE CHILD. THE DEPARTMENT SHALL PROVIDE THE REASONS FOR ANY DENIAL TO THE COURT. IF THE COURT ACCEPTS THE DEPARTMENT'S CUSTODY RECOMMENDATION, THE COURT ~~denies the request, the court order must state~~ MUST INFORM ANY DENIED FAMILY MEMBER OF the reasons for the denial TO THE EXTENT THAT CONFIDENTIALITY LAWS ALLOW. THE COURT SHALL INCLUDE THE REASONS FOR DENIAL IN THE COURT ORDER IF THE FAMILY MEMBER WHO IS DENIED TEMPORARY LEGAL CUSTODY REQUESTS IT TO BE INCLUDED.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency plan hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 2. Section 41-3-439, MCA, is amended to read:

"41-3-439. Department to give placement priority to extended family member of an abandoned child. (1) If the department has received temporary legal custody of an abandoned child pursuant to 41-3-438 or permanent legal custody pursuant to 41-3-607, the department shall give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, in determining the person or persons with whom the abandoned child should be placed if:

(a) placement with the extended family member is in the best interests of the abandoned child;

(b) the extended family member has requested that the abandoned child be placed with the family member; and

(c) the department has determined that the extended family member is qualified to receive and care for the abandoned child.

(2) If more than one extended family member of the abandoned child has requested that the child be placed with the family member and all are qualified to receive and care for the child, the department may determine which extended family member to place the abandoned child with in the same manner as provided for in 41-3-438(4).

(3) This part does not affect the department's ability to assess the appropriateness of placement of the child with a noncustodial parent when abandonment has been found against only one parent.

(4) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that the child be placed with that family member and the department denies the request, the department shall give that family member a written statement of the reasons for the denial TO THE EXTENT THAT CONFIDENTIALITY LAWS ALLOW."

Section 3. Section 41-3-445, MCA, is amended to read:

"41-3-445. Permanency plan hearing. (1) (a) (i) Subject to subsection (1)(b), a permanency plan hearing must be held by the court:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); and

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court shall conduct a hearing and make a finding whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency plan hearing is not required if the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian.

(c) The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another

1 hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to
2 the requirements of this section.

3 (2) At least 3 working days prior to the permanency plan hearing, the department and the guardian ad
4 litem shall each submit a report regarding the child to the court for review. The report must address the
5 department's efforts to effectuate the permanency plan for the child, address the options for the child's
6 permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan
7 to carry out the placement decision, including specific times for achieving the plan.

8 (3) At least 3 working days prior to the permanency plan hearing, an attorney or advocate for a parent
9 or guardian may submit an informational report to the court for review.

10 (4) The court's order must be issued within a reasonable time after the permanency plan hearing. The
11 court shall make findings on whether the permanency plan is in the best interests of the child and whether the
12 department has made reasonable efforts to finalize the plan. The court shall order the department to take
13 whatever additional steps are necessary to effectuate the terms of the plan. If a member of the child's extended
14 family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be
15 awarded to that family member or that a prior grant of temporary custody with that family member be made
16 permanent and the court denies the request, the court order must state, THE DEPARTMENT SHALL INVESTIGATE AND
17 DETERMINE IF AWARDING CUSTODY TO THAT FAMILY MEMBER IS IN THE BEST INTERESTS OF THE CHILD. THE DEPARTMENT
18 SHALL PROVIDE THE REASONS FOR ANY DENIAL TO THE COURT. IF THE COURT ACCEPTS THE DEPARTMENT'S CUSTODY
19 RECOMMENDATION, THE COURT MUST INFORM ANY DENIED FAMILY MEMBER OF the reasons for the denial TO THE
20 EXTENT THAT CONFIDENTIALITY LAWS ALLOW. THE COURT SHALL INCLUDE THE REASONS FOR DENIAL IN THE COURT ORDER
21 IF THE FAMILY MEMBER WHO IS DENIED CUSTODY REQUESTS IT TO BE INCLUDED.

22 (5) In its discretion, the court may enter any other order that it determines to be in the best interests of
23 the child that does not conflict with the options provided in subsection (6) and that does not require an
24 expenditure of money by the department unless the court finds after notice and a hearing that the expenditures
25 are reasonable and that resources are available for payment. The department is the payor of last resort after
26 all family, insurance, and other resources have been examined.

27 (6) Permanency options include:

28 (a) reunification of the child with the child's parent or guardian;

29 (b) adoption;

30 (c) appointment of a guardian pursuant to 41-3-444; or

(d) long-term custody if the child is in a planned permanent living arrangement established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

(B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the child's best interests; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(7) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

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